

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 7.22(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition.

(d) *Availability of information—(1) General.* TTB will promptly post to its public Web site, <http://www.ttb.gov>, all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request

that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

- (i) The request must be in writing;
- (ii) The request must clearly identify the information to be kept confidential;
- (iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;
- (iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and
- (v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

[T.D. TTB-53, 71 FR 42269, July 26, 2006]

### § 7.23 Brand names.

(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate TTB officer finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

## § 7.24

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(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

### § 7.24 Class and type.

(a) The class of the malt beverage shall be stated and, if desired, the type thereof may be stated. Statements of class and type shall conform to the designation of the product as known to the trade. If the product is not known to the trade under a particular designation, a distinctive or fanciful name, together with an adequate and truthful statement of the composition of the product, shall be stated, and such statement shall be deemed to be a statement of class and type for the purposes of this part.

(b) Malt beverages which have been concentrated by the removal of water therefrom and reconstituted by the addition of water and carbon dioxide shall for the purpose of this part be labeled in the same manner as malt beverages which have not been concentrated and reconstituted, except that there shall appear in direct conjunction with, and as a part of, the class designation the statement “PRODUCED FROM \_\_\_\_\_ CONCENTRATE” (the blank to be filled in with the appropriate class designation). All parts of the class designation shall appear in lettering of substantially the same size and kind.

(c) No product shall be designated as “half and half” unless it is in fact composed of equal parts of two classes of malt beverages the names of which are conspicuously stated in conjunction with the designation “half and half”.

(d) Products containing less than one-half of 1 percent (.5%) of alcohol by volume shall bear the class designation

“malt beverage,” or “cereal beverage,” or “near beer.” If the designation “near beer” is used, both words must appear in the same size and style of type, in the same color of ink, and on the same background. No product containing less than one-half of 1 percent of alcohol by volume shall bear the class designations “beer”, “lager beer”, “lager”, “ale”, “porter”, or “stout”, or any other class or type designation commonly applied to malt beverages containing one-half of 1 percent or more of alcohol by volume.

(e) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to “ale,” “porter,” or “stout” and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall bear any of these class designations.

(f) Geographical names for distinctive types of malt beverages (other than names found under paragraph (g) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless (1) in direct conjunction with the name there appears the word “type” or the word “American”, or some other statement indicating the true place of production in lettering substantially as conspicuous as such name, and (2) the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic; Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wurtzburger, Pilsen (Pilsener and Pilsner): *Provided*, That notwithstanding the foregoing provisions of this section, beer which is produced in the United States may be designated as “Pilsen,” “Pilsener,” or “Pilsner” without further modification, if it conforms to such type.

(g) Only such geographical names for distinctive types of malt beverages as the appropriate TTB officer finds have by usage and common knowledge lost their geographical significance to such